

REMARKS

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable by Yamaguchi et al. (U.S. Patent No. 5,513,201) (hereinafter "Yamaguchi '201") in view of Yamaguchi et al. (U.S. Patent Application Publication No. 2004/0091013) (hereinafter "Yamaguchi '013"). Claim 1 stands provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10523634 in view of Yamaguchi '013. Claims 2-9, while objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form.

Applicants respectfully submit that Yamaguchi '013 does not qualify as prior art in the instant application for at least the following reasons. Yamaguchi '013 cannot be applied under 35 U.S.C. § 102(e) as of it's March 12, 2002 PCT International filing date in this instance because the WIPO publication (WO/2002/082163) of the corresponding international application (PCT/JP02/02314) did not publish in the English language. For the Examiner's convenience in reviewing this point, a copy of the cover sheet of the WIPO publication showing the "Publication Language" as Japanese is attached to this Response paper as Exhibit A.

Moreover, while this WIPO publication has a publication date of October 17, 2002, this WIPO publication also does not qualify as prior art in this application because a verified English-language translation of the instant application's Japanese priority document has previously been filed in this application on February 21, 2008, thus perfecting the August 30, 2002 priority date of this application and, accordingly, predating the October 17, 2002 publication date of the WIPO publication.

Accordingly, the applied Yamaguchi '013 reference does not qualify as prior art against the instant application. As all of the applied rejections apply Yamaguchi '013, Applicants

respectfully submit that all rejections should be withdrawn. Applicants respectfully assert that all pending claims are in condition for allowance. To the extent that any of Applicants' understandings are incorrect in these regards, clarification is respectfully requested to be provided by the Examiner in the next Office Communication.

The Examiner is thanked for the indication that claims 2-9, while objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form. Applicants respectfully submit that dependent claims 2-9 are also allowable at least because of their dependence from independent claim 1, and the reasons discussed previously. Withdrawal of the objection to dependent claims 2-9 is thus respectfully requested.

CONCLUSION

In view of the foregoing, Applicants submit that the pending claims are in condition for allowance, and respectfully request reconsideration and timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response; the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution. A favorable action is awaited.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including

any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573.

This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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